charge on December 13, 1978 she was further admitted to General Hospital Melaka for treatment for about 80 days. After her discharge, she had to attend as an out-patient. She had to move about on crutches for about one year. She was later examined by the Consultant Orthopaedic Surgeon, General Hospital Melaka on July 1, 1982 who found that the fracture of the right femur had united and resulted in permanent shortening by 1 c.m. She walked with a limp. Her right knee movements were restricted to 40°. That was due to being primarily related to the nature of her injury. Her chief complaints were pain in the right knee joint and at the femural fracture site at times. Due to the restriction of movements of the right knee, she was unable to squat, to negotiate stairs and uneven surfaces and found difficulty in doing her daily prayers.

The learned Judge in his grounds of judgment considered the awards in several authorities as guidelines and having regard to facts and circumstances of the case made a global award of $35,000 for all her injuries, deducted 10% for overlapping and awarded $31,500. It is clear that the global award was made not purely on the 1 c.m. shortening of the second respondent's right leg but covered all the other injuries, pain and suffering, the long period of treatment that she had undergone and loss of amenities. Even though the award might be slightly generous, we did not consider it to be manifestly excessive. For these reasons, we dismissed the appeal.

Appeal dismissed.

Solicitors: *Vohrah & Tan Chee Lan; E. Ramasamy & Co.*

LEE YOKE CHYE v. TOH THEAM BOCK & CO.

[S.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil Barakbah S.C. JJ.) February 3 & August 9, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 120 of 1984]

Land Law – Issue document of title held by solicitors for registered owner – Alleged sale of portions of the land by agent of owner – Solicitors claiming to hold title-deeds as stakeholders – Solicitors agent of registered owner – National Land Code, ss. 5, 281(1) & 330(1).

In this case the appellant had retained the respondent, a firm of solicitors, to act for her in the purchase of land in Perak and the transaction had been completed. The issue document of title was delivered and received by the respondent. Subsequently the appellant agreed to sell the land to a purchaser and retained another firm as her solicitors. Her new solicitors applied for the issue document of title to be returned but the respondent refused to comply with this demand. The respondent in its defence stated that the appellant had executed a power of attorney in favour of her son and that the son as her attorney had entered into agreements for the sale of portions of the land. The appellant took out an originating summons for the return of the documents of title. The respondent thereupon applied for an interpleader summons to be served on the alleged purchasers. The claimants relied on the clause of the agreements that "until such time when a proper representation is agreed to by all the other co-owners of the other portions of the said land, the relevant title of the land shall be kept in the safe custody of the respondent who shall be the stakeholders thereof." The learned trial judge dismissed the application of the appellants and the appellants appealed.

Held: (1) an issue document of title particularly one relating to a large piece of land which has yet to be subdivided into individual housing lots, cannot be deposited and held "as stakeholders". As the respondent was not holding the issue document of title as stakeholder, it was not competent for him to take out a stakeholder interpleader summons;

(2) on the facts of the case the respondent was holding the issue document of title merely as agent for the appellant and as the agency and authority of the respondent has been terminated, the claimants (the alleged purchasers) were unable to prevent the respondent from complying with the demand of the appellant for the return of the issue document of title.

Cases referred to:

(1) *Maloney* v. *Hardy* (1970) 216 E.G. 1582, 1585.
(2) *Sorrell* v. *Finch* [1977] A.C. 728, 745.

SUPREME COURT.

V. Muthusamy for the appellant.

V.S. Visvanathan for the respondent.

Cur. Adv. Vult.

Seah S.C.J. (delivering the Judgment of the Court): This appeal raises a short but interesting point of law. According to the appellant:

(a) In or about 1981 she retained the respondent to act for her in the purchase of a parcel of land situate in the Mukim of Bagan Tiang, Kerian, Perak, known as Lot No. 1811 comprised in State Lease No. 1327 containing an area of 15 acres 2 roods 30 poles or thereabout (hereinafter referred to as the said land). The transaction was successfully concluded by the registration of a memorandum of transfer of the said land at the Ipoh Land Office on

13.7.82 vide Persn. No. 12791/82 Jilid No. 1542 Folio No. 88 in the names of the appellant and the issue document of title to the said land was duly delivered and received by the respondent;

(b) On 14.7.83 the appellant entered into a sale and purchase agreement of the said land with Messrs. Kurasani Sdn. Bhd. and the balance of the purchase price was paid by Kurasani on 12.9.83. For the purpose of this land transaction the appellant retained Messrs. Lim Cheng Poh & Lim as her solicitors;

(c) On 21.7.83 the appellant instructed her solicitors to demand the return of the issue document of title to the said land from the respondent. A reminder was sent on 22.8.83. On 13.9.83 the appellant formally revoked the retainer and discharged the respondent and requested that the issue document of title be handed over to her solicitors. The respondent refused to comply with this demand.

The respondent do not appear to dispute the above statements of the appellant but in defence state as follows:

(i) That on 24.2.82 the appellant executed a Power of Attorney in favour of her son, Gee Kuang Chin and that this Instrument was registered at Ipoh High Court on 19.3.82 vide P/A No. 317/82. This Power of Attorney was subsequently cancelled by the appellant on 12.9.83.

(ii) That when Gee Kuang Chin was an attorney of the appellant it was alleged that he entered into a few sale and purchase agreements disposing of several portions of the said land. Gee Kuang Chin had denied signing these agreements which are now the subject of legal proceedings in the court below.

When the respondent failed to hand over the issue document of title to the said land to the appellant or her solicitors and to resolve this impasse, an Originating Summons was taken out by the appellant for "an Order that Messrs. Toh Thiam Hock & Co., the former solicitors to the plaintiff do deliver to Messrs. V. Muthusamy & Co., the solicitors for the plaintiff such documents of title relating to all that parcel of land situate in the Mukim of Bagan Tiang, Kerian, Perak, known as Lot No. 1811 comprised in State Lease No. 1327 in the custody or power of the said Messrs. Toh Thiam Hock & Co. and costs".

The respondent then applied for an Interpleader summons to be served on the various alleged purchasers of the portions of the said land (hereinafter referred to as the claimants) to appear and state the nature and particulars of their respective claims to the subject-matter of this action. It is clear from the opposing affidavits filed by the claimants that after reciting the alleged sale and purchase agreements entered into with the appellant's attorney in 1982 or thereabout they also rely on clause 11 of the alleged agreements which reads:

"Until such time when a proper representation is agreed to by all the other co-owners of the other various portions of the said land, the relevant title of the land shall be kept in the safe custody by M/s Toh Thiam Hock & Co., advocates & solicitors of No. 16, Kota Road, Taiping who shall be the stakeholders thereof."

The learned judge dismissed the originating summons after a hearing holding that "Until such time when the issue between the plaintiff and the purchasers are settled the defendants are in no position to release the title deed to anyone. They are in no position to hand over the title deed to the plaintiff either."

The appellant was dissatisfied with this decision and had appealed to this court.

The real issue before this court was when the respondent received the issue document of title under clause 11 of the alleged agreements did he receive it as "stakeholder" or as agent for the appellant? If the respondent received it as "stakeholder" then he was right to take out a "stakeholder interpleader summons" in view of the rival claims made by the appellant as vendor and the various claimants as purchasers. On the other hand, if it were the latter then, in our opinion, the respondent was wrong to interplead after his agency and authority had been terminated by the appellant in 1983.

Now, what meaning is to be attributed to the word "stakeholders" in the context of clause 11 of the alleged sale and purchase agreement?

Jowitt's Dictionary of English Law (2nd ed.) defines "stakeholder" as a person with whom money is deposited pending the decision of a bet or wager; a person who holds money or property which is claimed by rival claimants, but in which he himself claims no interest. There is some

confusion of terminology as to the meaning of "stakeholder". "Stakeholder" is often used both by estate agents and the courts to describe the status of an estate agent who accepts a deposit (a) in the course of negotiation or (b) after a contract has been concluded.

The essence of stakeholding in vendor and purchaser cases is that a binding contract of sale has been entered into and the intending purchaser deposits with a third party a sum to be held pending completion; meanwhile the third party holding that deposit may part with it to neither contracting party without the consent of the other, and if competing demands arise he can interplead [*per* Edmund Davies L.J. in *Maloney* v. *Hardy*[1]]. This passage appears to have been approved in *Sorrell* v. *Finch*.[2]

Section 5 of the National Land Code 1965 defines "an issue document of title" to mean any document prepared for issue to the proprietor of any land (whether under this Act or under the provisions of any previous land law) being a copy of, or an extract from, the register document of title relating thereto. In other words, an "issue document of title" is only evidence that the person named therein is presently the registered owner of the interest in the land.

We have not come across any case nor have we been able to find any binding authority which has ruled that an "issue document of title" under the Torrens system can be deposited and held "as stakeholder' in a sale and purchase agreement. Having regard to the definition of an 'issue document of title" in section 5 of the 1965 Act, as at present advised, we think that an "issue document of title" particularly one relating to a large parcel of land which has yet to be subdivided into individual housing lots, cannot be deposited and held "as stakeholder". On the other hand, in our opinion, an "issue document of title" can be held and deposited within the limited purposes stated in section 281(1) and section 330(1) of the 1965 Act. As the respondent was not holding the "issue document of title" as stakeholder, we are of the opinion, that it was not competent for him to take out a "stakeholder interpleader summons". On the facts of this case, we are of the opinion that the respondent was holding the "issue document of title" merely as agent for the appellant. Since the agency and authority of the respondent had been terminated in 1983, in our opinion, the claimants were unable to prevent the respondent from complying with the demand of the appellant for the return of the "issue document of title" relating to State Lease No. 1327.

For the above reasons, we allow the appeal with costs here and below. The deposit to be refunded to the appellant.

Appeal allowed.

Solicitors: *V. Muthusamy & Co.; S.N. Leow & Co.*

TANJONG JAGA SDN. BHD. v. MINISTER OF LABOUR AND MANPOWER & ANOR.

[S.C. (Abdul Hamid C.J. (Malaya), Seah & Abdoolcader S.C. JJ.) August 19, 20 & 27, 1986]

[Kuala Lumpur – Supreme Court Civil Appeal No. 132 of 1985]

Administrative Law – Certiorari – Claim for recognition of trade union – Decision of Minister – Eligibility of employees for membership in trade union – Alleged breach of rules of natural justice – Function of judicial review – Privative clause – Industrial Relations Regulations 1980, reg. 4(1)(c) – Industrial Relations Act, 1967, s. 9.

Trade Union – Claim for recognition of – Decision of Minister – Judicial review.

In this case the second respondent, a trade union of employees in the hotel, bar and restaurant business, made a claim for general recognition by the appellant, the operator of a night club, in respect of its employees.

The appellant disputed the fact that the majority of its employees were members of the trade union and wrote to the Director General of Industrial Relations asking for certain particulars of its employees in relation to the claim. The Director General instead asked the appellant to submit a list of its employees which was duly sent. Subsequently the second respondent reported the matter of non-compliance with section 9(3) of the Industrial Relations Act, 1967 to the Director General who then referred it to the Registrar of Trade Unions for a membership check. This disclosed that a majority of the appellant's employees was within the scope of union representation on the date of the claim for recognition. The appellant was then advised to recognise the trade union. The appellant decided to have their own survey which showed that the trade union did not in fact represent a majority of its employees. The Director General however rejected the appellant's survey, reaffirmed the Registrar's findings and stated that if recognition was not given he would notify the Minister. The matter was accordingly referred to the Minister who gave his decision according recognition to the trade union. The appellant then applied to the High Court for *certiorari* to quash the Minister's decision but this was refused. The appellant appealed to the Supreme Court and at the appeal